



STATE OF CALIFORNIA
FRANCHISE TAX BOARD

Legal Branch
P. O. Box 1720
Rancho Cordova, CA 95741-1720

STEVE WESTLY
Chair

CAROLE MIGDEN
Member

DONNA ARDUIN
Member

August 31, 2004, Franchise Tax Board Litigation Roster

All cases currently active and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list is also provided of new cases that have been added to the roster for the month as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: www.ftb.ca.gov/law/Lit_roster.pdf.

The Litigation Roster on the Internet site will be the latest version. It is normally revised on a monthly basis.

FRANCHISE AND INCOME TAX
CLOSED CASES – AUGUST 2004

Case Name

Court Number

New Gaming Systems, Inc.

U.S. District Court for the Eastern District of California
Case No. CIVS-03-1126-WBS PAN

FRANCHISE AND INCOME TAX
NEW CASES – AUGUST 2004

Case Name

Court Number

None

**FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER**

AUGUST 2004

ACKERMAN, PETER & JOANNE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC296334

Taxpayer's Counsel

Holly Kendig, Christopher W. Campbell
O'Melveny & Myers, LLP

Filed – 05/23/03

FTB's Counsel

Brian Wesley

- Issues
1. Whether plaintiffs are entitled to a refund of taxes similar to that allowed by the Internal Revenue Service as the result of the settlement of a lawsuit against them for misappropriating the income of various partnerships.
 2. Whether plaintiffs filed timely claims for refund with respect to the years 1992 and 1993.
 3. Whether plaintiffs timely filed the suit for refund.

<u>Years</u>	1992 and 1993	<u>Amount</u>	\$4,912,037.26
--------------	---------------	---------------	----------------

Status **Judgment and Notice of Entry of Judgment in favor of Defendant filed on August 17, 2004. Notice of Entry of Judgment filed by Plaintiffs' attorney on August 20, 2004.**

AMERICAN GENERAL REALTY INVESTMENT CORP., INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC03425690

Taxpayer's Counsel

Roy E. Crawford, Robert J. Waldow
Heller, Ehrman, White & McAuliffe, LLP

Filed – 10/23/03

FTB's Counsel

David Lew

- Issues
1. Whether dividends received from insurance subsidiaries are, as a matter of law and fact, nonbusiness income.
 2. Whether section 24344(b) controls the allocation of interest expense.
 3. Whether section 24425 was properly applied to allocate expenses to insurance company dividends.
 4. Whether the insurance subsidiaries constitute a separate unitary business of the taxpayer.
 5. Whether the increase in the income assigned to California fairly reflects the taxpayer's business in this state.

<u>Year</u>	1991	<u>Amount</u>	\$2,824,983.00
-------------	------	---------------	----------------

Status Discovery proceeding. Mandatory Settlement Conference scheduled for September 1, 2004, and Trial scheduled for September 20, 2004. **Defendant's Settlement Conference Statement mailed on August 25, 2004.**

BRESLOW, BARRY & WENDY v. Franchise Tax Board

Los Angeles Superior Court Docket No. 03K20961

Taxpayer's CounselCharles P. Rettig, Steven D. Blanc & Sharyn Fisk
Hochman, Salkin, Rettig, Toscher & Perez, P.C.

Filed – 12/02/03

FTB's Counsel

Felix E. Leatherwood

Issues

1. What portion of the Program Area Sales and Use Tax Credit passes through to shareholders in an S Corporation?
2. Whether the Franchise Tax Board should be equitably estopped from denying the claim for refund.

Year

1994

Amount

\$49,500.00

StatusCase Management Review scheduled for September 13, 2004. **Plaintiffs' Case Management Statement filed on August 25, 2004.****COLGATE-PALMOLIVE, CO. & SUBSIDIARIES v. Franchise Tax Board**

Sacramento Superior Court Docket No. 03AS00707

Taxpayer's CounselEric J. Coffill, Carley A. Roberts
Morrison & Foerster, LLP

Filed – 02/07/03

FTB's Counsel

Steven J. Green

Issues

1. Whether the sales factor was properly calculated by excluding proceeds from short-term financial instruments and value added taxes assessed by foreign countries.
2. Whether the property factor needs to be adjusted to value property at its appreciated value to fairly reflect its activities in California.

Years

1974-1982, 1984-1987, 1989-1991

Amount

\$2,912,696.00

Status

Trial Setting Conference continued to September 20, 2004.

EDUCATIONAL EMPLOYEES CREDIT UNION, et al. v. Franchise Tax Board

Sacramento Superior Court Docket No. 511821

Filed - 12/20/89

Court of Appeal, 3rd Appellate District, No. 3-CV-C020733Taxpayer's CounselJoanne Garvey, & Teresa Maloney
Heller, Ehrman, White & McAuliffeFTB's Counsel

Steven Green

Issue

Whether defendant's determination as to the methodology for deduction of indirect expenses against taxable investment income was proper.

Years

1980 through 1985

Amount

\$1,137,006.98

Status**Supplemental Brief of Amicus Curiae, California Credit Union League, in Support of Appellants and Cross-Respondent mailed on August 27, 2004.**

FREIDBERG, EDWARD & TRACI E. REYNOLDS v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC-02-404182

Filed – 02/06/02

Court of Appeal, 1st Appellate District, No. A106315*Taxpayer's Counsel*

John E. Cassinat & Ronald L. Carello

Cassinat Law Corporation

FTB's Counsel

Marguerite Stricklin

Issues

1. Whether Plaintiffs' "horse breeding and racing business expenses" were deductible as business expenses in the years involved.
2. Whether expenses incurred by plaintiffs in horse breeding and racing activities were deductible as business expenses in the years involved.

Years

1991 through 1994

Amount

\$149,696.00

Status**Defendant/Appellant's Request for an Extension of Time to File Brief granted on August 2, 2004.****FUJITSU IT HOLDINGS, INC. v. Franchise Tax Board**[Amdahl Corporation v. Franchise Tax Board] 120 Cal.App.4th 459

San Francisco Superior Court Docket No. 321296

Filed – 05/14/01

Court of Appeal, 1st Appellate District Court Div. 2, No. A101101 (FTB)Court of Appeal, 1st Appellate District Court Div. 2, No. A101203 (Amdahl)Court of Appeal, 1st Appellate District Court Div. 2, No. A102558 (Attorney's fees)**California Supreme Court No. S127167***Taxpayer's Counsel*

Timothy K. Roake

Fenwick & West LLP

FTB's Counsel

Kristian Whitten

Issues

1. Whether Section 25106 was properly applied to the facts of this case in a manner which does not discriminate against foreign commerce.
2. Whether Section 24411 was properly applied in this case.
3. Whether Section 24411 discriminates against foreign commerce.
4. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is a dividend for purposes of Sections 24411 and 25106 of the Revenue and Taxation Code.
5. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is gross income.

Years

1988, 1989, 1991 and 1992

Amount

\$2,935,439.00

Status**Defendant's Petition for Review to California Supreme Court filed on August 16, 2004.**

GENERAL MOTORS CORPORATION, et al. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC269404
Court of Appeal, 2nd Appellate District No. B165665

Filed – 03/06/02

California Supreme Court No. S127086

Taxpayer's Counsel

Charles R. Ajalat

Law Office of Ajalat, Polley & Ayoob

FTB's Counsel

Stephen Lew, Donald

Currier & Joseph O'Heron

- Issues
1. Whether gross receipts from the disposition of marketable securities were properly excluded from the sales factor.
 2. Whether interest income was properly characterized as business income.
 3. Whether dividends received with respect to stock representing less than a 50% voting interest were properly classified as business income.
 4. Whether the limitation on deductions prescribed by sections 24402 and 24410 resulted in unconstitutional discriminatory taxation.
 5. Whether various receipts from intangible assets were properly excluded from the sales factor.
 6. Whether research tax credits were properly limited to the entity incurring the expense.
 7. Whether a deduction was properly denied with respect to foreign country taxes withheld on dividends.
 8. Whether the taxpayer is entitled to an increased deduction with respect to depreciation on assets held by foreign country subsidiaries.
 9. Whether the taxes determined to be owing by the Franchise Tax Board were properly computed and assessed.

Years 1986 through 1988 Amount \$10,692,755.00

Status **Plaintiffs/Appellants' Petition for Review to the California Supreme Court filed on August 12, 2004. Request for Depublication (Petition for Review pending) filed by (non-party) Coalition of California Business and Taxpayer Organization on August 27, 2004. Amicus Curiae Letter in Support of Granting Review in Case No. S127086, mailed on August 31, 2004, to the Supreme Court by Tax Executive, Institute, Inc.**

HAMEETMAN, FRED AND JOYCE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 305968

Filed – 11/12/03

Taxpayer's Counsel

Eric L. Troff, Esq.

Gibbs, Giden, Locher & Turner, LLP

FTB's Counsel

Donald Currier

Issue Whether Plaintiffs were entitled to a business bad debt reduction.

Years 1990 and 1993 Amount \$65,738.00

Status Trial scheduled for November 29, 2004. **Plaintiffs' Motion for Summary Judgment, Memorandum of Points & Authorities, supporting Declarations, Statement of Facts and Request for Judicial Notice filed August 12, 2004.**

HARDIE, GEORGE G. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC292256

*Taxpayer's Counsel*Richard E. Posell, Gregory P. Korn
Greenberg, Glusker, Fields, Claman,
Machtiger & Kinsella, LLP

Filed – 03/18/03

*FTB's Counsel*Anthony Sgherzi
George M. TakenouchiIssue Whether Plaintiff was a resident of California for the year in issue.Year 1993 Amount \$1,172,932.00Status **Order to Show Cause re: Dismissal continued to October 26, 2004; Plaintiff's Notice of Continuance filed on August 27, 2004.****HYATT, GILBERT P. v. Franchise Tax Board**

Clark County Nevada District Court No. A382999

*Taxpayer's Counsel*Thomas L. Steffen & Mark A. Hutchison
Hutchison & Steffen
H. Bartow Farr III

Filed - 01/06/98

*FTB's Counsel***James W. Bradshaw**
McDonald, Carano, Wilson LLP
Las Vegas, NevadaIssues 1. Whether plaintiff was a resident of California from September 26, 1991 through April 2, 1992.
2. Whether the Franchise Tax Board committed various torts with respect to plaintiff and is subject to a claim for damages.
3. Whether the Nevada courts have or should exercise jurisdiction over the Franchise Tax Board.Years 1991 and 1992 Amount \$13,204,611.00Status Clark County District Court:
Discovery proceeding.**JIBILIAN, TONY & DOROTHY v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC298685

Court of Appeal 2nd Appellate District Court No. B175952*Taxpayer's Counsel*Derek L. Tabone, Esq.
Law Offices of Tabone, APC

Filed – 07/09/03

*FTB's Counsel*Brian Wesley
Elisa Wolfe-DonatoIssue Whether Plaintiffs have taxable income for the years involved.Years 1999 through 2001 Amount \$209,742.00

Status Plaintiffs' Notice of Appeal filed on June 7, 2004.

JIM BEAM BRANDS CO. v. Franchise Tax Board

San Francisco Superior Court No. CGC-02-408203

Filed - 05/21/02

Court of Appeal, 1st Appellate District Court No. A107209

Taxpayer's Counsel

FTB's Counsel

Edwin P. Antolin

George C. Spanos

Silverstein & Pomerantz

Jordan M. Goodman, Brian L. Browdy

Horwood, Marcus & Berk

Issues

1. Whether the gain realized on the sale of all of the stock of a subsidiary was properly classified as business income.
2. Assuming the gain on the sale of all of the stock was business, whether the FTB properly computed the basis of the stock.

Year

1987

Amount

\$133,042.00

Status

Plaintiff's Notice of Appeal filed on July 12, 2004.

K-MART, CORPORATION, et al. v. Franchise Tax Board

U.S. Bankruptcy Court for the Northern District of Illinois

Filed - 04/11/03

Bankruptcy No. 02-B02474 - Adversary Proceeding No. 03A01420

Taxpayer's Counsel

FTB's Counsel

Charles F. Smith

Michael Cornez

Skadden, Arps, Slate, Meagher & Flom

Larry Fischer

Issues

1. Whether gain realized on the sale of 20+% interest in an Australian retailer, Coles, was business income.
2. Whether the gain realized on the sale of the interest in Coles was properly treated for AMT purposes.
3. Whether dividends and interest received with respect to Coles was business income.
4. Whether the taxpayer's request to account for its Canadian inventory on a LIFO basis was properly denied.
5. Whether two insurance subsidiaries were properly excluded from the combined report.
6. If the insurance subsidiaries were includible in the combined report, whether adjustments need to be made to the property and sales factors.
7. Whether proceeds from the short-term investment of financial assets were properly excluded from the sales factor.
8. Whether section 24402 is constitutional.
9. Whether adjustments based upon federal RAR's were correctly made.
10. Whether there were other unspecified errors in adjustments made or not made to the taxpayer's returns.
11. Whether an under-payment penalty was properly imposed.

<u>Years</u>	1986-1989, 1992-1994, 1999 & 2000	<u>Amount</u>	\$3,524,625.00 - Tax \$ 82,590.01 - Penalty
--------------	--------------------------------------	---------------	--

Status **Status Conference held on August 29, 2004.**

THE LIMITED STORES, INC. AND AFFILIATES v. Franchise Tax Board

Alameda Superior Court Docket No. 837723-0

Filed – 04/09/01

Court of Appeal, 1st Appellate District Court No. A102915

Taxpayer's Counsel

FTB's Counsel

Edwin P. Antolin

Joyce Hee

Morrison & Foerster, LLP

- Issues
1. Whether gross receipts from the sale of short-term financial instruments should be included in the sales factor.
 2. Whether gain realized on the sale of a partial interest in a limited partnership formed from three subsidiaries constitutes business income.

<u>Years</u>	1993 and 1994	<u>Amount</u>	\$2,185,718.00
--------------	---------------	---------------	----------------

Status **Plaintiffs/Appellants' Letter Brief filed August 17, 2004. Defendant/Respondent's Letter Brief filed August 18, 2004.**

THE LONG TERM INVESTMENT/Trustee Chase Bank v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 312094

Filed – 03/12/04

Taxpayer's Counsel

FTB's Counsel

Jeffrey G. Varga, Ethan Lipsig

Donald R. Currier

Paul, Hastings, Janofsky & Walker, LLP

Issue Whether Revenue and Taxation Code section 17651 is preempted by 29 USC § 1144 (a).

<u>Years</u>	1994, 1997 through 2000	<u>Amount</u>	\$2,905,255.00
--------------	-------------------------	---------------	----------------

Status **Case Management Conference completed on August 30, 2004. Final Status Conference scheduled for April 21, 2005, and Trial to be held on May 5, 2005.**

MARKEN, DONALD W. & CLAUDINE H v. Franchise Tax Board

San Francisco Superior Court Docket No. 302520

Filed - 04/05/99

Court of Appeal, 1st Appellate Dist. No. A091644

California Supreme Court No. S 104529

Taxpayer's Counsel

FTB's Counsel

William E. Taggart, Jr.

Marguerite Stricklin

Taggart & Hawkins

Issue Whether plaintiffs were residents of California in 1993.

Year 1993 Amount \$244,012.00

Status **Defendant's Final Reply Brief on Remand filed August 4, 2004.**

THE MCGRAW-HILL COMPANIES, INC., a New York Corporation v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC 03424737

Filed - 09/24/03

Taxpayer's Counsel

Jeffrey M. Vesely, Richard E. Nielsen & Annie H. Huang
Pillsbury Winthrop, LLP

FTB's Counsel

Anne Michelle Burr

- Issues
1. Whether Plaintiff was entitled to use Marked-to-Market accounting allowed under the Internal Revenue Code when those provisions had not been adopted by California.
 2. Whether other adjustments made or allowed by the Internal Revenue Service should be allowed by California.

Years 1993 and 1994 Amount \$606,744.00

Status Mandatory Settlement Conference rescheduled to November 17, 2004. Trial continued to December 6, 2004. **Plaintiff's Joint Stipulation of Facts filed August 19, 2004.**
Defendant's Motion for Summary Judgment filed on August 19, 2004. Plaintiff's Motion for Summary Judgment filed August 20, 2004.

MICROSOFT CORPORATION v. Franchise Tax Board

San Francisco Superior Court Docket No. 400444

Filed - 10/19/01

Court of Appeal, 1st Appellate Dist. Div. 3 No. A105312

Taxpayer's Counsel

James P. Kleier, Esq.
Preston Gates & Ellis, LLP

FTB's Counsel

Julian O. Standen

- Issues
1. Whether the denominator of the receipts factor was properly calculated by excluding receipts from marketable securities.
 2. Whether the limitation on the deduction of dividends provided for in Section 24402 discriminates.
 3. Whether adjustments made to increase the income of controlled foreign corporations included in the combined report were proper.

Year 1991 Amount \$1,879,809.00

Status **Defendant/Appellant's Reply Brief filed on August 6, 2004.**

MILHOUS, PAUL B. & MARY A. v. Franchise Tax Board

San Diego Superior Court Docket No. GIC772282

Filed – 08/27/01

Court of Appeal, 4th Appellate Dist. Division 1, No. D043058Court of Appeal, 4th Appellate Dist. Division 1, No. D044362*Taxpayer's Counsel*

Steve Mather.

Kajan, Mather and Barish

Kevin Duthoy & Joseph A. Vinatieri

Bewley, Lassenben & Miller, LLP

FTB's Counsel

Leslie Branman-Smith

Issue Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

Year 1993 Amount \$227,246.00

Status **Defendant/Appellant's Reply Brief filed by mail on August 3, 2004. Extension granted on August 27, 2004, to Plaintiffs/Respondents to file Brief by September 9, 2004.**

MILHOUS, ROBERT E. & GAIL P. v. Franchise Tax Board

San Diego Superior Court Docket No. GIC773381

Filed – 08/27/01

Court of Appeal, 4th Appellate Dist. Division 1, No. D043058Court of Appeal, 4th Appellate Dist. Division 1, No. D044362*Taxpayer's Counsel*

Steve Mather.

Kajan, Mather and Barish

Kevin Duthoy & Joseph A. Vinatieri

Bewley, Lassenben & Miller, LLP

FTB's Counsel

Leslie Branman-Smith

Issue Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

Year 1993 Amount \$670,825.00

Status **Defendant/Appellant's Reply Brief filed by mail on August 3, 2004. Extension granted on August 27, 2004, to Plaintiffs/Respondents to file Brief by September 9, 2004.**

MONTGOMERY WARD LLC v. Franchise Tax Board

San Diego Superior Court Docket No. GIC802767

Filed – 12/30/02

Taxpayer's Counsel

Antolin, Pilar M. Sansone, Amy Silverstein

Silverstein & Pomerantz, LLP

FTB's Counsel

Gregory Price

Issues

1. Whether proceeds from the sale, maturity or other disposition of short-term financial instruments were properly excluded from the sales factor.
2. Whether section 24402 Rev. & Tax. Code is constitutional.

<u>Years</u>	1989 through 1994	<u>Amount</u>	\$2,694,192.00
<u>Status</u>	Status Conference held on May 14, 2004; Case deferred pending outcome of General Motors. Case Management Conference scheduled for September 17, 2004.		

NEW GAMING SYSTEMS, INC. & AKA INDUSTRIES, INC. v. Franchise Tax Board

Sacramento Superior Court Docket No. 03AS05705

Filed – 10/10/03

Taxpayer's Counsel

FTB's Counsel

Spencer T. Malysiak

Michael Cornez

Spencer T. Malysiak Law Corp.

<u>Issues</u>	<ol style="list-style-type: none"> 1. Whether New Gaming Systems, Inc., timely filed its suit for refund for the income year ended March 31, 1996. 2. Whether a declaratory relief action can be brought to prevent the collection of tax. 3. Whether a suit for refund can be maintained for a year in which the amount of tax has not been paid in full. 4. Whether Plaintiffs are liable for California taxes on income generated from leases for operating Indian casinos.
---------------	--

<u>Years</u>	1996 and 1997	<u>Amount</u>	\$90,773.05
--------------	---------------	---------------	-------------

<u>Status</u>	Answer of Defendant to Second Amended Complaint for Declaratory Judgment; Injunctive Relief; and Refund of Taxes Paid filed on August 6, 2004.
---------------	---

ORDLOCK, BAYARD M. & LOIS S. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC278386

Filed – 07/25/02

Court of Appeal, 2nd Appellate Dist. No. B169465

Taxpayer's Counsel

FTB's Counsel

Richard C. Field

Michael R. Weiss

Bingham McCutchen LLP

<u>Issue</u>	Whether the tax involved was timely assessed.
--------------	---

<u>Year</u>	1983	<u>Amount</u>	\$12,350.00
-------------	------	---------------	-------------

<u>Status</u>	Respondent's Petition for Rehearing filed on August 12, 2004. Modification of Opinion filed (no change in Judgment); Petition for Rehearing denied on August 24, 2004.
---------------	---

PACIFIC TELESIS GROUP, INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. 319008

Filed – 02/20/01

Court of Appeal, 1st Appellate Dist. Div. 2 No. A104602

Taxpayer's Counsel

FTB's Counsel

Allan L. Schare

David Lew

McDermott, Will & Emery

Anne M. Burr

Issue What is the proper amount of depreciation deduction with respect to property acquired from former unitary affiliates?

Years 1987 through 1990 Amount \$9,960,422.00

Status **Plaintiff/Appellant's Stipulation of Extension of Time filed on August 11, 2004.**

PAINE, THOMAS & TERESA A. NORTON v. Franchise Tax Board

San Francisco Superior Court Docket No. 324518

Filed – 09/13/01

Appellate Court – 1st Appellate Dist. Court No. A102401

California Supreme Court No. S 125369

Taxpayer's Counsel

Edward Winslow

Layman, Lempert & Winslow

FTB's Counsel

Marguerite Stricklin

Issues 1. Whether the plaintiffs became residents of California on April 10, 1990. .
2. Whether "guaranteed payments" received by plaintiffs while residents of California from a partnership could be included in the income taxed by California.

Years 1990, 1996 through 1999 Amount \$144,278.00

Status Remittitur issued on July 29, 2004.

THE PILLSBURY COMPANY, a Delaware Corp. v. Franchise Tax Board

San Francisco Superior Court Docket No. 414931

Filed – 11/21/02

Appellate Court – 1st Appellate Dist. Court No. A105155

Taxpayer's Counsel

Jeffrey M. Vesely, Esq.

Richard E. Nielsen, Esq.

Pillsbury Winthrop, LLP

FTB's Counsel

David Lew

Issue Whether California definition of gross income incorporated amendments to the Internal Revenue Code dealing with losses of Alaska Native Corporation.

Years 1986 and 1987 Amount \$1,133,040.00

Status **Appellant's Request for Judicial Notice filed on July 12, 2004, denied on August 11, 2004, for failure to demonstrate relevance of the document. Request for Oral Argument filed by both Appellant and Respondent on August 12, 2004.**

SHAFRAN, ALLEN J. & TOBY v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 316070

Filed – 05/25/04

Taxpayer's Counsel

W. Patrick O'Keefe, Jr.

W. Patrick O'Keefe, Jr. Incorporated

FTB's Counsel

Anthony Sgherzi

Issue Whether the denial of a deduction for depreciation based upon a federal adjustment was proper.

<u>Year</u>	1992	<u>Amount</u>	\$45,415.00 Tax \$ 9,083.00 Penalty
-------------	------	---------------	--

Status **Discovery proceeding.**

TOY'S "R" US, Inc. & Affiliates v. Franchise Tax Board

Sacramento Superior Court Docket No. 01AS04316

Filed - 07/17/01

Court of Appeal, 4th Appellate Court No. C045386

Taxpayer's Counsel

FTB's Counsel

Eric J. Coffill

Michael J. Cornez

Carley A. Roberts

Issue Whether gross receipts from the sale of short-term financial investment were properly excluded from the documentation of the sales factor.

<u>Years</u>	1991 through 1994	<u>Amount</u>	\$5,342,122.00
--------------	-------------------	---------------	----------------

Status **Defendant/Respondent's Request for Judicial Notice filed August 2, 2004. Ruling on Request for Judicial Notice deferred pending calendaring and assignment of the panel filed August 4, 2004. Plaintiffs/Appellants' Opposition to Respondent's Request for Judicial Notice filed August 17, 2004. Plaintiffs/Appellants' Reply Brief filed on August 19, 2004.**

VENTAS, INC. & SUBSIDIARIES v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC03423154

Filed – 08/05/03

Taxpayer's Counsel

FTB's Counsel

Amy L. Silverstein

Paul Gifford

Silverstein & Pomerantz, LLP

Issue Whether Plaintiff elected to use the mark-to-market method of accounting for California purposes.

<u>Year</u>	1997	<u>Amount</u>	\$205,874.00
-------------	------	---------------	--------------

Status Notice of Entry of Judgment for Plaintiffs filed July 12, 2004.

YOSHINOYA WEST, INC. v. Franchise Tax Board

Los Angeles Superior Court, Central District No. BC274343

Taxpayer's Counsel

Dwayne M. Horii

William C. Choi

Rodriguez, Horii & Choi

Filed - 05/22/02

FTB's Counsel

Donald R. Currier

- Issues
1. Whether Yoshinoya West, Inc. is involved in a unitary business with its Japanese parent company.
 2. Whether application of the standard allocation and apportionment provision of the Revenue and Taxation Code disproportionately taxed Yoshinoya West.

Years 1986 and 1987 Amount \$1,741,534.00

Status Minutes Entered; Court's Ruling in favor of Defendant filed June 22, 2004. Defendant's Proposed Statement of Decision filed June 28, 2004. Plaintiff's Objections to Proposed Statement of Decision filed July 6, 2004.